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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/965,856	10/01/2001	Daisuke Kitazawa	214418US2	4045
22850 7590 04/11/2007 OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER NGUYEN, TUAN HOANG	
			ART UNIT	PAPER NUMBER
			2618	
SHORTENED STATUTORY PERIOD OF RESPONSE		NOTIFICATION DATE	DELIVERY MODE	
3 MONTHS		04/11/2007	ELECTRONIC	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 04/11/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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jgardner@oblon.com

<b>Office Action Summary</b>	<b>Application No.</b> 09/965,856	<b>Applicant(s)</b> KITAZAWA ET AL.	
	<b>Examiner</b> Tuan H. Nguyen	<b>Art Unit</b> 2618	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 January 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                        |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____   |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments, see applicant's remarks, filed on 01/18/2007, with respect to the rejection(s) of claims 1-12 under 35 U.S.C § 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

Art Unit: 2618

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rahman (U.S PAT. 6,445,916) in view of Dupont (U.S PAT. 5,729,542).

Consider claims 1, 6, and 11, Rahman teaches for allocating radio resource to radio terminals or communication connections in a radio communication system in which each of radio terminals or communication connections requires a different communication quality (col. 1 line 66 through col. 2 line 20), comprising: retrieving a first group including radio terminals or communication connections in which actual communication qualities are degraded more than required communication qualities (i.e., subscribers (first group) which use the least number of steps, the communication qualities are degraded more than required communication qualities may be billed at a lower rate), and a second group including radio terminals or communication connections in which actual communication qualities are favorable more than required communication qualities, based on the required communication qualities reported from the radio terminals or communication connections, respectively (col. 16 lines 25-55. i.e., subscribers (second group) which use the greatest number of steps, communication qualities are favorable more than required communication qualities may be accordingly billed at a highest rate, calculating the a total power consumption of a downlink transmission, an uplink transmission, or both, (the first group and second group) associated with a subscriber (based on the required communication qualities reported

Art Unit: 2618

from the radio terminals), during each measuring interval as a indicator of resource level of resources expended).

Rahman does not explicitly show that allocating the radio resource to the radio terminals or communication connections in first group based on a priority order in first group; and allocating the radio resource terminals or communication connections in second group based on a priority order in said second group after the said first group is allocated.

In the same field of endeavor, Dupont teaches allocating the radio resource to the radio terminals or communication connections in first group (classes 1-2) based on a priority order in first group (col. 1 lines 30-40); and allocating the radio resource terminals or communication connections in second group (classes 3-5) based on a priority order in second group after the first group (classes 1-2) is allocated (figs. 4 –6, col. 4 lines 20-47).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use, allocating the radio resource to the radio terminals or communication connections in first group based on a priority order in first group; and allocating the radio resource terminals or communication connections in second group based on a priority order in second group after the first group is allocated, as taught by Dupont, in order to provide a method and apparatus for accessing a communication system relies on the use of varying access probabilities for subscribers or messages of varying priority.

Consider claims 2, 7, and 12, Dupont further teaches radio communication comprises: a second retrieving part retrieving a third group including radio terminals or communication connections that do not have required communication qualities (col. 5 line 61 through col. 6 line 11); a second allocating part allocating the radio resource to the radio terminals or communication connections in said third group when the radio resource is allocated to the radio terminals or communication connections in said first group and said second group by said first allocating part (col. 3 line 32 through col. 4 line 29).

Consider claims 3 and 8, Rahman further discloses first allocating part allocates the radio resource to the radio terminals or communication connections in said first group in an ascending order of said actual communication qualities, an descending order of differences between said required communication qualities and said actual communication qualities, or an descending order of deterioration degrees of the actual communication qualities to the required communication qualities (col. 9 lines 35-50).

Consider claims 4 and 9, Rahman further discloses first allocating part allocates the radio resource to the radio terminals or communication connections in second group in an ascending order of actual communication qualities, an ascending order of differences between required communication qualities and actual communication qualities, or favorable degrees of the actual communication qualities to the required communication qualities (col. 9 lines 35-50).

Consider claims 5 and 10, Rahman further discloses required communication qualities are communication qualities concerning allowable delay times, transmission rates, or throughputs (fig. 4 col. 8 lines 4-11).

***Conclusion***

5. Any response to this action should be mailed to:

Mail Stop \_\_\_\_\_ (Explanation, e.g., Amendment or After-final, etc.)

Commissioner for Patents

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Facsimile responses should be faxed to:

(571) 273-8300

Hand-delivered responses should be brought to:

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan H. Nguyen whose telephone number is (571)272-8329. The examiner can normally be reached on 8:00Am - 5:00Pm.

Art Unit: 2618

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Maung Nay A. can be reached on (571)272-7882882. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information Consider the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tuan Nguyen  
Examiner  
Art Unit 2618 *T.N.*

  
NAY MAUNG  
SUPERVISORY PATENT EXAMINER